WORKMEN'S COMPENSATION ACTS — PROVISIONS FOR DEATH BENEFITS: AT WHAT TIME DOES RIGHT OF ACTION ACCRUE? — The plaintiff's husband was hurt while in the defendant's employ and died on the following day. Between the time of the injury and the time of death a higher scale of death benefits under the Workmen's Compensation Act went into effect. The trial court allowed the plaintiff to recover under the new scale. *Held*, that the award was correct. *State ex rel. Carlson* v. *District Court*, 154 N. W. 661 (Minn.).

To support the defendant's contention that the plaintiff's right of action accrued at the time of the injury it may be argued that one violates duties towards others by acts, not by subsequent results, though certain consequences must ensue before the person affected can maintain his action, and therefore that the situation at the time of acting should govern. Here, however, what the defendant did or did not do is quite immaterial, for the Compensation Act provided for recovery even in case of accident. Furthermore, it is a fundamental principle of the law that one violates one's duties, thereby creating causes of action, not solely by doing an act, but by producing consequences that may happen long after the cause. See H. T. Terry, "Proximate Consequences in the Law of Torts," 28 HARV. L. REV. 10, 11. For example, one owes a duty to a father not to deprive him of the services of a daughter, and this duty is not broken until the loss of services, though that be months after the commission of the original tort. That the Compensation Act provided for the survival of the deceased's right of action is therefore the only basis on which can be supported the defendant's contention that the plaintiff's claim was founded on her husband's injury and not his death. This supposition is overcome by pointing out that the action accrued, not to the estate, but to the deceased's personal representative for the benefit of designated dependents, and also that the damages recoverable are such as result to the beneficiaries from the death. GEN. STATUTES OF MINN., 1913, ch. 84 A. See TIFFANY, DEATH BY WRONGFUL ACT, 2 ed., § 23. Moreover, the act of the principal case provides for an election between its provisions for death benefits and recovery under an older statute for wrongful death. GEN. STATUTES, *supra*, § 8204. And the latter has been construed to give an original right of action. *Anderson* v. *Fielding*, 92 Minn. 42, 99 N. W. 357, 359. It follows from these considerations that the plaintiff's right to recover was original and accrued on her husband's death when the higher compensation was in effect. This conclusion entails the enforcement in this case of retrospective legislation. See *Society for Propagation of the Gospel* v. *Wheeler*, 22 Fed. Cas. 756, 767. But since the constitution of Minnesota does not prohibit such statutes, the decision of the principal case remains correct. GEN. STATUTES, *supra*, pp. 2071–2099.

BOOK REVIEWS

EQUITY PRACTICE, STATE AND FEDERAL. Volumes I, II, and III. By Robert Treat Whitehouse. Chicago: Callaghan and Company. 1915. pp. cxiv, lxvi, xxxiv, 3296.

This work is confined entirely to those states where equity is administered as a separate system. It does not cover states where law and equity have been blended into a single system of procedure by a code. The first volume alone contains an exposition of principles with authorities. The second volume contains the principal statutory and code provisions on equity procedure now in force in the various jurisdictions where the English Chancery system is still essentially followed, and also the equity rules in force in these jurisdictions — compared and compiled down to January 1, 1915. These are arranged by

states in alphabetical order, except that the United States comes last in the list. The third volume contains equity forms arranged by subjects. All three volumes contain careful tables of contents, arranged by chapters, and the last volume contains a full index. There is, however, no table of cases, and references to the National Reporter System are omitted.

As the first volume is the only one devoted to the exposition of principles, with citation of authorities, it is evident that that volume contains the principal matter to be considered by the reviewer. In style it is clear and terse, the paragraphs being successively numbered, and each being preceded by a few descriptive words in bold-faced type to indicate the scope of the matter treated in that paragraph. Since the work is evidently intended for both the skilled practitioner and for the novice, there is of necessity much that is elementary. So also each subject is approached from the standpoint of general principle, with some qualifications, it is true, but without exhaustive treatment of details. This was perhaps necessary if the work of exposition was to be confined to a single volume; but it may, perhaps, be doubted whether the work would not have been of greater assistance if the volume devoted to statutes and rules had been used for exposition also, which would have allowed more exhaustive consideration of the qualifications and details of the general principles so ably presented.

Two examples will suffice. The vexed subject of the availability of equitable defenses in suits at law is treated in Chapter XV, which covers but twelve pages. This is a matter which has been much considered in the federal courts — to say nothing of the states mentioned in that chapter. Thus the availability of fraud as a defense to an action at law has been treated in various aspects in the Supreme Court of the United States and has been the subject of numerous conflicting decisions in the inferior federal courts. (See "Fraud as a Defense at Law in the Federal Courts," 15 COL. L. REV. 489.) Yet this subject is only incidentally treated in a single footnote (p. 506) which ignores entirely *Insurance Co.* v. *Bailey*, 13 Wall. (U. S.) 616, and *Cable* v. *United States Life Ins. Co.*, 191 U. S. 288, on the one hand, and *George* v. *Tate*, 102 U. S. 564, and *Hartshorn* v. *Day*, 19 How. (U. S.) 211, on the other. It is true that *Insurance Co.* v. *Bailey*, *supra*, and certain other cases are cited in connection with the general equity jurisdiction of the federal courts at page 29. But as there is no cross reference (or table of cases) this would be of little assistance to one examining the question of equitable defenses only.

A similar difficulty attends the exposition of the principles which govern reformation and rescission of contracts in something less than three pages (pp. 706–709). Such cursory treatment necessarily confines the author to bare statement of general principles. Perhaps for this reason he does not clearly distinguish between the requisites for reformation as compared with those for rescission, or point out that these two remedies are in truth the antithesis of each other. Rescission is a disaffirmance and destruction of the bargain for fraud or mutual mistake which enters into the bargain itself. Reformation is an affirmance of the bargain by remolding a writing which by fraud or mutual mistake does not correctly express that bargain, so that the writing conforms to what the parties actually agreed. (See "Mistake of Fact as a Ground for Affirmative Equitable Relief," 23 HARV. L. REV. 608.) As there can be no reformation unless there is a valid and enforceable bargain to which the writing may be made to correspond, the statement occurring on page 706, that in case of fraud by one party and mistake by the other the writing may be reformed so as to correspond to the real intention of the innocent party, is at least doubtful.

The work, however, has great merits and will be a distinct aid to the profession. It is clear and logically arranged. The practitioner who desires to obtain a broad survey of the field of equity practice may read it from cover to

cover (as the reviewer did) with both pleasure and profit. Because it gives due attention to details of practice, the busy practitioner who desires immediate assistance in drawing equity papers will find it of great assistance. In the opinion of the reviewer the thanks of the profession are due to Mr. Whitehouse.

EDWIN H. ABBOT, JR.

LAW AND ITS ADMINISTRATION. By Harlan F. Stone. New York: Columbia University Press. 1915. pp. vii, 232.

In a course of eight lectures Dean Stone has undertaken the somewhat difficult task of presenting to laymen "some of the more fundamental notions which underlie our legal system." The character of his audience should be borne in mind in considering the attitude of the writer toward his subject. It accounts, perhaps, for the vigor of his defense of the law, its administration and its administrators, particularly in the lectures on "Law and Justice" and "Constitutional Limitations," in which he has in mind the general and sweeping, uncritical and even intemperate attacks which have been made at times by the laity upon our legal system. He shows very clearly how unsound is the popular assumption that the administration of law under the conditions presented by the complex civilization of to-day is an easy task; he makes it clear, on the contrary, how difficult a task it is, a task which absolutely requires the best efforts of the most thoroughly trained to cope with its difficulties. In his discussions of the subjects of "Bench and Bar," "Procedure," and "Law Reform," Dean Stone frankly admits a justification for the dissatisfaction of the public where real defects do undoubtedly exist, and he presents a constructive and progressive program of reform. It is to be regretted by all who have at heart the administration of justice in the state of New York, that the hope expressed by the writer that needed reforms would be accomplished by the adoption of a new constitution was destined to be disappointed. The lectures on "Nature and Functions of Law" and "Fundamental Legal Conceptions" show that quality of simplicity which comes from clear thinking and a knowledge of the subject.

It is somewhat strange, however, that Dean Stone should, at this late day, so vigorously support the decision of the New York Court of Appeals in the famous Ives case, which he says "was the occasion of an outburst of criticism of the Court of Appeals, so loud, so ill-tempered, and so misguided, as to startle those who have respect for and faith in our institutions. . . . The spirit which under such circumstances dictated virulent attacks upon the court by the unsuccessful litigants is a spirit essentially lawless and subversive of all orderly judicial procedure" (p. 152). He further says that the fact that the constitution of the state of New York has been amended so as to authorize the passage of a workmen's compensation act shows that "by the orderly process of the law the supreme law of the state has been brought into harmony with the popular will, and a complete scheme of workmen's compensation is now in operation in this state. Whether this law will be upheld by the Supreme Court remains to be seen, but the history of the subject in New York emphasizes the fact that there is a direct and orderly method of correcting the erroneous determination of courts if such are made, and of bringing the provisions of our constitution into harmony with the popular will without resorting to ill-tempered abuse of the courts" (p. 155). But if a statute like that which was held in the Ives case to violate the state constitution does also violate the federal constitution, the direct and orderly method does not prove efficacious. If, on the other hand, such a statute does not violate the federal constitution it is because it does not involve a deprivation of life, liberty, or property without due process of law under the federal constitution; but if so it should not be held to be such